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EXAMINER

FIDEI, DAVID

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3728

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Tschantz et al (US 6,244,440). With reference to figure 1 a universal air cushioning material for protecting an article to be packed in a transporting vessel from an outer force such as an impulse, and capable of being interposed between the article and an inner wall of the transporting vessel, comprising two superposed, rectangular synthetic resin films, see col. 2, lines 6, 7, made of a same raw material, wherein the synthetic resin films have side portions forming end portions 12, 16 of above and below and left 14 and right 18 external frames of the films, the side portions being thermally fused, a plurality of partitioned periphery portions 46, 48 disposed in an intermediate portion between the side portions, formed by arbitrarily thermally fusing the intermediate portion in accordance with a dimension and shape of the article to be packed; and at least a pair of notches 42, 44 disposed horizontally symmetrically in accordance with a dimension and shape of the article to be packed at arbitrary positions in a vicinity of the side portions of the periphery portions, and at least one air passage port 106 disposed in the periphery portions to form a plurality of mutually communicated air chambers, see figure 2, to enable arbitrary variation in contact area between the air chambers and the article to be packed or an inner wall of the transporting vessel; and an air inlet port between 56, 50 and 58, 50, disposed in at least one of the air chambers to inject air from the air inlet port to expand an entirety of the air chambers and

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thereby an inside thereof can be pressed against the article to be packed and an outside thereof can be pressed against an inner wall of the transporting vessel, and arbitrary positions of the side portions and remaining portions after notching the notch portions, respectively, are thermally fused in accordance with a dimension and shape of the article to be packed.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tschantz et al (US 6,244,440). As to claims 4 and 6, Tschantz et al col. 2, lines 8 and 9, states the sheets may be formed of any suitable plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ PE/PE or PP/PP film that constitutes a raw material with an antistatic agent blended therein, since it has been held to be within the general

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skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, see § M.P.E.P. 2144.06.

As to claim 5, Official Notice is taken check valves are well known. To employ a check valve would have been obvious in order to prevent back flow of air from the inflation chamber.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of claims 4-6 recite the universal air cushioning material according claim 1 or 2. However, claim 2 has been cancelled. It appears the language should be claims 1 or 3.

Response to Arguments

8. Applicant's arguments filed March 31, 2009 have been fully considered but they are not persuasive. Applicant argues the use of an inflatable packaging cushion of Tschanz et al. is limited to the article to be packed having a simple shape such as a rectangular solid. However, nowhere in Tschanz et al is the product limited to a rectangular solid. As stated in col. 2, lines 15 and 16, the cushion is designed to conveniently fold around a product 20, but the product is not limited to a rectangular solid. Secondly, nothing in the claimed subject matter distinguishes the product over a rectangular solid. The claim recites air cushioning material for protecting an article to be packed but is not set forth what the article comprises. It is also agreed the article is

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not a positive limitation of the claim. Finally, the embodiment of figure 2 shows the universal air cushioning device used with a rectangular solid article instead of a wine bottle.

Applicant further argues, Tschantz et al. do not suggest nor disclose (1) "notch remains", (2) fixing [stabilizing] the article to be packed by "notch remains" and "air chambers", and (3) ability to resist external impact force by (A) the entire "air chambers" and (B) the end portions of the "air chambers" that outwardly project than "notch remains". However, Tschantz et al discloses at least a pair of notches 42, 44 where notch remains are formed by those portions of the air chambers and fused portions in the vicinity of the notches. The inflatable packaging cushion of Tschantz et al has the ability to resist external impact force by the entire air chambers, see col. 1, lines 36-41. Finally, the end portions of the air chambers 72, 74 are shown in figure 1 that outwardly project than notch remains. Accordingly, the rejections have been maintained.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. The examiner can normally be reached on Monday - Friday 8:30 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David T. Fidei/

Primary Examiner, Art Unit 3728